

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application of :  
Keisuke TSUBATA :  
Appln. No. 10/659,508 : Art Unit - 3735  
Filed: September 10, 2003 : Examiner - Navin  
For: PULSE WAVE DETECTING : Nathithithadha  
APPARATUS AND FOURIER :  
TRANSFORM PROCESS :  
APPARATUS : Docket No. S004-5111

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Mail Stop ISSUE FEE  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO NOTICE OF NON-COMPLIANT INFORMATION  
DISCLOSURE STATEMENT AND RENEWED REQUEST FOR  
CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT**

S I R:

Applicant filed by mailing certificate dated September 30, 2006 an Information Disclosure Statement ("IDS") submitting two references which were properly listed on annexed Form PTO-1449. The IDS was filed under 37 CFR §1.97(c) and was accompanied by the certification required by 37 CFR §1.97(e).

**MAILING CERTIFICATE ON PAGE 4**

The application proceeded to allowance and a Notice of Allowance was mailed October 2, 2006. Approximately two months later, on December 1, 2006, the PTO mailed a Notice of Non-Compliant Information Disclosure Statement, checking a box stating that the IDS lacks the fee set forth in 37 CFR §1.17(p) and therefore, the IDS has not been considered. Applicant respectfully submits that the Notice of Non-Compliant Information Disclosure Statement was mailed in error and should be vacated.

As set forth in MPEP §609.04(b) entitled "Timing Requirements for an Information Disclosure Statement," an Information Disclosure Statement accompanied by a properly executed certificate of mailing will be considered as having been filed on the date of the mailing certificate. More particularly, as stated on page 600-155, MPEP Rev.5, Aug. 2006:

An information disclosure statement will be considered to have been filed on the day it was received in the Office, or on an earlier date of mailing if accompanied by a properly executed certificate of mailing or facsimile transmission under 37 CFR 1.8, or if it is in compliance with the provisions of "Express Mail" delivery under 37 CFR 1.10.

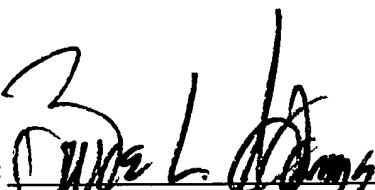
In the present case, the IDS was accompanied by a properly executed certificate of mailing dated September 30, 2006 and, therefore, is considered to have been filed on September 30, 2006. On the other hand, the Notice of Allowance was mailed on October 2, 2006, which is after the September 30, 2006 date of filing of the IDS. In view thereof, the IDS was properly filed under 37 CFR §1.97(c), i.e., before the mailing date of a Notice of Allowance, and was accompanied by the certification required by 37 CFR §1.97(e). Therefore no fee is required to gain consideration of the IDS.

Applicant requests that the Notice of Non-Compliant Information Disclosure Statement be vacated as having been mailed in error, and that the IDS filed by mailing certificate dated September 30, 2006 be duly considered by the Examiner.

Respectfully submitted,

ADAMS & WILKS  
Attorneys for Applicant

By:

  
Bruce L. Adams  
Reg. No. 25,386

17 Battery Place  
Suite 1231  
New York, NY 10004  
(212) 809-3700

MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Mail Stop ISSUE FEE, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

Donna Riccardulli

Name

  
Donna Riccardulli  
Signature

DECEMBER 29, 2006

Date